(1)

Supreme Court, U.S.
FILED

97 1449 DEC 22 1997

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

FRANCISCO H. GUZMAN, PETITIONER PRO SE

vs.

KENNETH MILEY, ET AL

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

FRANCISCO H. GUZMAN
PETITIONER
904 TINNELL LANE
MT. JULIET, TN 37122
(615)-444-7495

---

25 pp

QUESTION PRESENTED

When adverse action regulations of the Drug Enforcement Administration at 0674 et seq require a letter of proposal (complaint) be filed with their Employee Relations Officer and notice given an employee prior to the conduct of an adverse action hearing, does a hearing examiner obtain jurisdiction over an employee to conduct a lawful hearing when there is no letter of proposal pending against the employee simply by entertaining a "moot" letter of proposal?

PARTIES TO PROCEEDING

FRANCISCO H. GUZMAN, Petitioner

vs.

KENNETH A. MILEY, Deputy Regional Director, Drug Enforcement Administration, JAMES R. BLAND, Regional Director, Drug Enforcement Administration, JOHN R. BARTELS JR., Administrator, Drug Enforcement Administration, GRIFFIN BELL, United States Attorney General, UNITED STATES CIVIL SERVICE COMMISSION, Respondents --

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI 1
TO THE U. S. COURT OF APPEALS FOR
THE SIXTH CIRCUIT COURT.

REPORTS ENTERED IN THIS CASE iii

JURISDICTION 1

CONSTITUTIONAL AND DEA REGULATIONS 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 3

LACK OF BASIS FOR FEDERAL JURISDICTION
IN THE COURT OF FIRST INSTANCE 2

CONCLUSION 4

APPENDIX 5

INDEX TO APPENDICES

Appendix A - Order by U.S. Court of Appeals for the Sixth Circuit denying Petitioners Motion for Reconsideration entered October 2, 1997.

Appendix B - Order by U.S. Court of Appeals for the Sixth Circuit denying Petitioners Appeal entered August 13, 1997.

Appendix C - Order by U.S. District Court for the Middle District of Tennessee entered August 20, 1996.

Appendix D - Copy of paragraphs on pages 13 and 14 at part C - Failure to Provide Administrative Law Judge in the Memorandum Opinion and Order by U.S. District Court for the Middle District of Tennessee entered August 10, 1979.

Appendix E - Petitioner's Motion to the U.S. District Court for the Middle District of Tennessee at docket no. 78-3056, submitted August 12, 1996.

Appendix F - Petitioner's August 18, 1997, Motion for Reconsideration of the Order by the U.S. Court of Appeals for the Sixth Circuit denying Petitioners Appeal and entered August 13, 1997.

Appendix G - Petitioner's Response to Appellee's Letter mailed for filing on December 10, 1996.

REPORTS ENTERED IN THIS CASE

1. Report by Richard A. Cooter, Hearing Examiner for the Drug Enforcement Administration (DEA).

2. Report by Federal Employees Appeal Authority (FEAA).

3. Judgments entered by Thomas A. Wiseman Judge for the U.S. District Court of Middle Tennessee in case docketed at number 78-3056 with all attachments.

4. Judgments entered by Keith, Siler, and Moore, Circuit Judges U. S. Sixth Circuit Court of Appeals in case docketed at number 96-6302.

TABLE OF AUTHORITIES CITED

CASES: **Pages.**

Hodges v. Schlinkert Sports Assn., ... 3
89 F.3d 310 (CA tth, 1996).

Rapaport v. Banco Mexicano Somex S.A.. 3
668 F.2d 667 (CA 2d, 1982).

Rogers v. Stratton Industries, Inc. 4
798 F.2d 913 (1986).

STATUTES: **Pages.**

United States Code

28 U.S.C. §1254(1) 1

Rules of Appellate Procedure

U.S. Supreme Court Rule 29.4(b) 1

Rules of Federal Civil Procedure

Fed. R. Civ. P. 60(b)(4) 2, 4

United States Constitution

Article III of the U.S. Constitution 1
Amendment V to the U.S. Constitution 1

Drug Enforcement Administration

Adverse Action Procedures

Removals 0674.71(A) (1/15/74) 1
0674.71(B) 2
0674.64(B) 2

JURISDICTION

The Court of Appeals Opinion by the judges in the panel assigned this matter was filed on August 13, 1997. A timely Petition for Reconsideration was filed on August 20, 1997. The Court of Appeals denial of the Petition for Reconsideration was issued on October 2, 1997 and is set forth in Appendix A to this Petition. This Court jurisdiction is invoked under Title 28 U.S.C. §1254(1) and the notifications required by Rule 29.4(b) have been made.

CONSTITUTIONAL AND DEA ADVERSE ACTION REGULATION

Article III of the Constitution limits the "'judicial power' of the United States to the resolution of 'cases' and 'controversies'" and Amendment V which requires that "No person shall be held to answer without due process of law."

The DEA Adverse Action Regulations which on May 14, 1975, read in part: At 0674.71(A) (REMOVALS):

> (1) These actions must be proposed in writing on official letterhead stationary.; (2) The proposal must clearly identify the charges, et seq; (3) A copy of this proposal should be filed with the Employee Relations Officer prior to delivery to the employee. A copy must be filed with the Employee Relations Officer within 7 days after delivery to the Employee; and (4) Copies of proposed adverse actions and employee's reply, if any, are not filed in the employee's Official Personnel Folder until and unless a disciplinary or adverse action is actually effected.

At 0674.71(B) - Delivery of the Proposal. Which says "See paragraph 0674.64B" and states:

> (1) Letters of proposed suspension should be delivered in person, read and/or explained to the employee, and witnessed by a third party. In cases where it is difficult or impossible to reach the employee in person, the proposal

may be transmitted by registered mail with a return receipt requested.

(2) A memo to the file regarding delivery of the proposal should be written. This memo should state when and where the proposal was delivered and by whom the delivery was witnessed. A copy of this memo must be sent to the Employee Relations Officer within 7 days after delivery of the proposal to the employee et seq..

STATEMENT OF THE CASE

On May 14, 1975, the Petitioner was required by Kenneth A. Miley, Respondent to appear before Richard A. Cooter, a Hearing Examiner for the Drug Enforcement Administration. Mr. Cooter required Petitioner take part in an adverse action hearing wherein Petitioner was charged solely with a proposal rendered "moot" April 29, 1975, by the Drug Enforcement Administration. Prior to the May 14, 1975, hearing the Drug Enforcement Administration never filed the written proposal required by their regulations against the Petitioner wherein a "Hearing Examiner" could lawfully obtain jurisdiction over the Petitioner. The Petitioner was then unlawfully terminated from employment as a Special Agent by the Drug Enforcement Administration and a series of unsuccessful appeals, including Petitioner's Rule 60(b)(4) motion the basis for this appeal, followed wherein Respondents were never required by any Administrative Board or any Court to present proof of a valid letter of proposal in compliance with the cited DEA regulations. Because the Petitioner has been pro se the reviewing Courts have not given Petitioner the same liberality of construction with regard to his pleadings that the Federal Rules of Civil Procedure afford any other litigant.

BASIS FOR FEDERAL JURISDICTION

There is no valid basis for Federal Jurisdiction by the court of First Instance. Or, any other federal Board or Court other than to dismiss their judgments for lack of jurisdiction.

REASONS FOR GRANTING APPEAL

1 - The Sixth Circuit Court of Appeals has entered a VOID decision in conflict with the decision of another U. S. Court of Appeals on the same important matter.

On May 14, 1975, the court of first instance (the DEA adverse action hearing conducted by Hearing Examiner Cooter) lacked jurisdiction over the Petitioner because there was no valid complaint pending against the Petitioner. Therefore, the District Court and Appellate Court lacked jurisdiction to uphold a void judgment by Hearing Examiner Cooter. "Commencement of an action as related to the entry of a valid judgment". "It is elementary, although sometimes overlooked, that an action must be properly commenced before a valid judgment or order can be entered therein, or provisional remedies obtained, where the defendant raises the timely objections that the action was not properly commenced. Rapaport v. Banco Mexicano Somex S.A., 668 F.2d 667 (CA 2d, 1982); and its own prior rulings "without a legally cognizable interest the issue is "moot", Hodges v. Schlinkert Sports Assn., 89 F.3d 310 (CA 6th, 1996).

2 - The Sixth Circuit Court of Appeals has sanctioned a VOID decision and a departure of its own rulings from the accepted and usual course of judicial proceedings by a lower court as to call for an exercise of this Court's supervisory power.

"When a statutory right is being pursued and the defense is raised defendant does not come within the purview of the statutes and facts critical to jurisdiction be in dispute, the court must make appropriate inquiry, and must satisfy itself on authority to entertain the case, Rogers v. Stratton Industries, Inc., 798 F.2d 913 (1986). The District Court did not conduct an inquiry by reviewing the Petitioner case. Nor, issue an order for Respondent to reply to Petitioner's motion before denying the Petitioner's Rule 60(b)(4) motion.

3 - This case has become so confused unless this court conducts a review the Petitioner will be denied justice.

CONCLUSION

Petitioner, Francisco H. Guzman, respectfully prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Sixth Circuit denying review of a Rule 60(b)(4) motion made by the Petitioner to the U. S. District Court for the Middle District of Tennessee.

Respectfully Submitted,

Francisco H. Guzman
Petitioner Pro Se
904 Tinnell Lane, Mt. Juliet, TN 37122

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APPENDIX

Appendix A:

FILED

October 2, 1997
LEONARD

GREEN, Clerk

No. 96-6302

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANCISCO H. GUZMAN, Plaintiff - Appellant	)	
v.	)	
	)	ORDER
KENNETH A. MILEY, Deputy Regional Director, Drug Enforcement Administration, JAMES R. BLAND, Regional Director, Drug Enforcement Administration, JOHN R. BARTELS JR., Administrator, Drug Enforcement Administration, GRIFFIN BELL, United States Attorney General, UNITED STATES CIVIL SERVICE COMMISSION Defendants - Appellees	)	

Before: KEITH, SILER, and MOORE, Circuit Judges

Francisco H. Guzman has filed a motion to reconsider this court's order of August 13, 1997, which affirmed the district court's order denying Guzman's "Motion for Leave

to File a Rule 60(b)(4) Motion to Set Aside a Void judgment for Lack of personal Jurisdiction."

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

The motion to reconsider is thus denied.

ENTERED BY ORDER OF THE COURT

___"s/_____"_____
Leonard Green, Clerk

Appendix B:

FILED
AUG 13, 1997
LEONARD

GREEN, Clerk

No. 96-6302

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANCISCO H. GUZMAN, Plaintiff - Appellant	)	
v.	)	
KENNETH A. MILEY, Deputy Regional Director, Drug Enforcement Administration, JAMES R. BLAND, Regional Director, Drug Enforcement Administration, JOHN R. BARTELS JR., Administrator, Drug Enforcement Administration, GRIFFIN BELL, United States Attorney General, UNITED STATES CIVIL SERVICE COMMISSION Defendants - Appellees	)	ORDER

Before: KEITH, SILER, and MOORE, Circuit Judges

Francisco H. Guzman, pro se, moves for oral argument on appeal from a district court order denying his "Motion for Leave to File a Rule 60(b)(4) Motion to Set Aside a Void Judgment for Lack of Personal Jurisdiction." This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Guzman worked as an agent for the Drug Enforcement Agency (DEA) from April 1966 to July 17, 1975. In 1973, Guzman was in charge of an investigation of Thomas R. Pitt, one of many defendants in a drug conspiracy case. Guzman became acquainted with Mr. Arnold Peebles, attorney for Pitt. In May 1974, Peebles loaned Guzman $10,000 in cash for his personal use. Guzman and Peebles also discussed a business venture to import jade necklaces, but this venture was not pursued. The financial relationship between Guzman and Mr.. Peebles came to the attention of the United States Attorney in January 1975. On March 31, 1975, the DEA notified Guzman by letter that he would be removed from his position as a criminal investigator in order "to promote the efficiency of the service." The letter stated that the social, professional, and financial relationship with Mr. Arnold Peebles, including the loan, created the appearance of a conflict of interest. Guzman requested a pre-termination hearing, which was held May 14 and 15, 1975. On July 11, 1975, the DEA recommended that the dismissal be upheld. Guzman appealed the DEA decision to the Federal Employee Appeals Authority (FEAA) of the Civil Service Commission. After a hearing, the FEAA upheld the DEA decision, and the Appeals Review Board of the Civil Service Commission refused to reconsider the case. Guzman then filed suit on February 15, 1978, in the United States District Court for the Middle District of Tennessee. Both parties moved for summary judgment. After oral argument, the district court issued a memorandum opinion and order granting summary judgment for the defendants. In an Order filed March 6, 1981, this court affirmed the district court's

decision. See Guzman v. Miley, No. 79-1634 (6th Cir. 1981) (unpublished order).

On June 22, 1995, Guzman filed a "Motion to Set Aside a Void Judgment" pursuant to Fed. R. Civ. P. 60(b)(4). The District Court denied the motion on August 30, 1995. Guzman's motion for leave to file a motion for reconsideration was denied in a marginal order entered September 11, 1995. This court affirmed the district court's order. See Guzman v. Miley, No. 95-6278 (6th Cir. Aug. 8, 1996) (unpublished order).

On August 13, 1996, Guzman filed the present "Motion for leave to File a Rule 60(b)(4) Motion to Set Aside a Void Judgment for Lack of Personal Jurisdiction," complaining again that the Administrative Manual change of April 29, 1975 (changing the regulations to have hearings before a Hearings Examiner rather than an Administrative Law Judge), resulted in a "lack of personal jurisdiction." The district court denied the motion in an order entered August 20, 1996. This timely appeal followed.

Despite Guzman's assertions to the contrary, no grounds warranting Rule 60(b) relief exist. An appeal from the denial of a Rule 60(b) motion does not bring up for review the underlying judgment. Amernational Indus., Inc. v. Action-Tungsram, Inc., 925 F.2d 970, 975 (6th Cir.), cert. denied, 501 U.S. 1233 (1991). Moreover, a Rule 60(b) motion is properly invoked only in "unusual and extreme situations where principles of equity mandate relief." Olle v. Henry & Wright Corp., 910 F.2d 357, 365 (6th Cir. 1990). This court reviews a district court's ruling pursuant to Rule 60(b) for an abuse of discretion. Windsor v. United States Dep't of Justice, 740 F.2d 6, 7 (6th Cir. 1984) (per curiam).

The district court did not abuse its discretion when it denied Guzman's present 60(b) motion. a Rule 60(b) motion is properly denied where the movant attempts to use such a motion to relitigate the merits of a claim and the allegations are unsubstantiated. See Mastini v. American Tel. & Tel. Co., 369 F. 2d 378, 379 (2d Cir. 1966) (attempt to relitigate a patent claim based upon unsubstantiated allegation of fraud), cert. denied, 387 U. S. 933 (1967). Se also Smith v. Mosier, 148 F. Supp. 638 (W. D. Mich. 1957) (where granting a new trial would serve no purpose except to relitigate issues which

have been fully considered and correctly and finally determined, motion for relief under Rule 60(b) should be denied). The present motion is Guzman's latest attempt to relitigate his case of 18 years ago. Guzman's claim has been fully considered by the district court and the Sixth Circuit. Because Guzman sought only to relitigate an issue already decided, the district court acted within its considerable discretion by denying relief.

Accordingly, the motion for oral argument is denied, and the district court's order is affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

__"S/_____"__
Leonard Green, Clerk

Appendix C:

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FRANCISCO H. GUZMAN	)	
	)	
V.	)	78-3056
	)	
KENNETH A. MILEY, et al	)	

ORDER

Before the Court is a "Motion for Leave to File a Rule 60(B)(4) Motion to Set Aside a Void Judgment for Lack of Personal Jurisdiction" filed by plaintiff. In it Mr. Guzman complains again that the Administrative Manual change of April 29, 1975, (changing the regulations to have hearings before a Hearings Examiner rather than an Administrative Law Judge) resulted in a "lack of personal jurisdiction." he reasons that, therefore, in the subsequent proceedings, including an appeal to the Federal Employee Appeals

Authority and the Appeals Review Board of the Civil Service Commission, a hearing by this Court and two trips to the Sixth Circuit Court of Appeals, that he has been deprived of due process of law.

In its most recent review of the case the Sixth Circuit said:

> The difference between a hearing examiner and an administrative law judge did not render the hearing accorded Guzman unfair. The district court addressed the matter in the 1979 memorandum opinion. Any defect in the proceedings before the DEA was procedural and not jurisdictional.

This latest attempt by the plaintiff to relitigate his termination of 18 years ago is totally frivolous and an abuse of our cherished right of access to the courts. The motion is DENIED.

It is so ORDERED. This document was entered on the docket in compliance with Rule 58 and/or Rule 79 at FRCP, on 8-20-96 by _"S/__ ".

__"s/_____"_____
Thomas A. Wiseman, Jr.
Senior U. S. District Judge

Appendix D:

C. Failure to Provide Administrative Law Judge

Plaintiff alleges error because he was denied a hearing in front of an administrative law judge at the department of Justice hearing. Mr. Richard Cooter, a hearing examiner, presided at that hearing. Defendants do not dispute that, at the time the letter of proposed removal was issued, an administrative law judge was required under DEA Administrative Manual § 0674.72B(2) (1974). Shortly after the letter was issued, however, but prior to the Department of Justice hearing, the regulation was changed to provide for a hearing before a hearing examiner instead of an administrative law judge (AR-I, at 263).

Appendix E:

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION

FRANCISCO H. GUZMAN) Plaintiff	)	
v.	)	Docket No: 78-3056
KENNETH A. MILEY, et al) Defendants	)	

MOTION TO SET ASIDE A VOID JUDGMENT

The plaintiff respectfully requests this court set aside as void a judgment by Richard A. Cooter, a hearing examiner for the Drug Enforcement Administration (DEA) and unlawfully upheld by Ira R. Harrison an appeals officer for the Federal Employees Appeals Authority (F.E.A.A.) and this court for **lack of personal jurisdiction** by hearing examiner Cooter in the captioned case. A judgment is void under Rule 60(b)(4) of the Federal Rules of Civil Procedure if the court that rendered it lacked jurisdiction of the subject matter, **or of the parties**, or acted in a manner inconsistent with due process of law. Antoine v. Atlas Turner, Inc., 66 F.3d 105, 108 (6th Cir. 1995) (quoting in re Edwards, 962 F.2d 641, 644 (7th Cir. 1992). This motion is directed to Judge Thomas A. Wiseman Jr., at the United States District Court for the Middle District of Tennessee who has not ruled on the **lack of personal jurisdiction** by DEA's hearing examiner.

On March 31, 1975, the DEA issued a proposal (complaint) to terminate the plaintiff's employment pursuant to subsection 0674.72 of their Administrative manual. On April 2, 1975, the DEA complaint was served on the plaintiff at Nashville, Tennessee. At the commencement of this action DEA administrative regulations required adverse action hearings be conducted **only** by Administrative Law Judges. On April 29, 1975, the DEA repealed their adverse action

regulations conferring jurisdiction to exercise DEA's subject matter jurisdiction over their employees by Administrative Law Judges. See attachment # 1.

On April 29, 1975, the DEA put into effect **new** adverse action regulations conferring jurisdiction to exercise DEA's subject matter jurisdiction over their employees by Hearing Examiners. The new April 29, 1975, DEA adverse action regulations made **no provisions for pending cases**. See attachment #1. When a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law. The Assessors v. Osbornes, 9 Well 567, 575 (1870); Brunner v. United States 343 U.S. 112. Effective April 29, 1975 the DEA's March 31, 1975, complaint against the plaintiff became a **moot issue**. Although there may have been originally, a genuine case or controversy, issues which have become **moot** will ordinarily not be decided. Franks v. Bowman Trans. Co. Inc. 424 U.S. 747, 47 L.Ed 2d 444, 96 S.Ct. 1251 (1976).

On May 14, 1975, Richard A. Cooter, a DEA hearing examiner, held a hearing on the now **moot complaint** originally issued under DEA regulations which specifically **precluded** his exercise of **personal jurisdiction**. It has been ruled administrative hearings conducted by unauthorized officers are invalid. Director, Office of Workers' Compensation Programs, U.S. Department of Labor v. National Mines Corp., et al 554 F.2d 1267 (1977, Cir. 4) and the usurpation of power to gain jurisdiction renders a judgment void. United States v. Zima v. Hobart Federal Savings & Loan Ass'n, 2 Fed. Rules Serv. 3rd 1350, 766 F.2d 1153 (1985, Cir. 7); Ben Sager Chemicals International, Inc. v. E. Targosz & C. 560 F.2d 805 (1977, Cir. 7); Kansas City S.R. Co. v. Great Lakes Carbon Corp. (1980, Cir. 8) 624 F.2d 822, 59 ALR Fed. 816, cert. den. 449 U.S. 955, 66 L.Ed 2d 220, 101 S.Ct. 363; U.S. v. Mc Donald (1980, ND. Ill.) 86 FRD 204 and V.T.A. Inc. v. Airco, Inc. (1979, Cir. 10) 597 F.2d 220.

An action is commenced by filing a complaint. Allied-Signal Inc., 915 F.2d 190 (6th Cir. - 1990), as of April 29, 1975, there has never been a lawful complaint to bring the plaintiff under the **personal jurisdiction** of hearing examiner Richard A. Cooter's grant of authority. A judgment

rendered without jurisdiction over the person violates due process. Mc Donald v. Mabee (1917) 243 U.S. 90, 30 S.Ct. 343, 61 L.Ed. 608.

The initial inquiry by the F.E.A.A. and the District Court on review of Cooter's judgment should have been whether the hearing examiner properly asserted jurisdiction over the plaintiff. Willis v. Sullivan, 931 F.2d 390 (6th Cir. 1991), rather than proceed to the merits. If a court does not have jurisdiction, ipso facto, it cannot address the merits of a case. The non moving party must, however, be afforded an ample opportunity to secure and present evidence relevant to the existence of jurisdiction. Rogers v. Stratton Industries, Inc. 798 F.2d 913 (6th Cir.. 1986). The plaintiff respectfully requests the defendants present evidence to this court of the existence of **personal jurisdiction** by Richard A. Cooter to review a complaint rendered **moot** April 29, 1975. If the defendants cannot prove the lawful existence of **personal jurisdiction** by hearing examiner Cooter the plaintiff respectfully requests the court grant his motion to set aside the judgments in this case as **VOID** for denying the plaintiff's right to due process of law.

Respectfully submitted,

STATEMENT IN LIEU OF NOTARIZATION

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 12, 1996

____"s/_____"____

Francisco H. Guzman
Plaintiff - pro se
904 Tinnell Lane
Mt. Juliet, Tennessee 37122
615-444-7495

One Attachment which consists of a copy of a one (1) page Supplemental Transmittal No. 132, Chapter 06 of the Drug Enforcement Administrative Manual and is dated 4/29/75 and

states: "This is a pen and ink revision of Section 0674, Discipline, Adverse Actions, Grievances, and Appeals.

Delete the title "Administrative Law Judge" and insert "Hearing Examiner" in its place in the following locations. It then numerically identifies every paragraph and line within this manual where the words "Administrative Law Judge" is written and should be changed to "Hearing Examiner".

_"s/_____"_
John R. Bartels, Administrator

Appendix F:

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANCISCO H. GUZMAN,)
Plaintiff - Appellant)

v. Docket No: 96-6302

KENNETH A. MILEY, Deputy Regional)
Director, Drug Enforcement Administration,)
JAMES R. BLAND, Regional Director, Drug)
Enforcement Administration, JOHN R.)
BARTELS JR., Administrator, Drug)
Enforcement Administration, GRIFFIN BELL,)
United States Attorney General, UNITED)
STATES CIVIL SERVICE COMMISSION)
Defendants - Appellees)

Motion for Reconsideration

Comes now the Appellant, Francisco H. Guzman pro se and asks the court reconsider its August 13, 1997, ORDER in this case based on the following factual issues.

1. The Appellant filed a Rule 60(b)(4) motion asking a district court set aside a void judgment by a DEA

hearing examiner resulting in the Appellant's unlawful dismissal from employment. The Appellant's challenge is based on a lack of personal jurisdiction over the Appellant by the hearing examiner. It is an **uncontested** fact when DEA repealed the jurisdictional portion of their adverse action regulations and then granted hearing examiners jurisdiction over DEA employees no provisions were made for hearing examiners to take over pending cases. It has been the law of the land for over 100 years "when a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law." Assessors v. Osbornes, 9 Well 567, 575 (1870); Brunner v. United States, 343 U.S. 112. There has never been a complaint filed and served on the Appellant, wherein a Hearing Examiner could bring the Appellant under his **personal** jurisdiction. Pursuant to Rule 3 of the Federal Rules of Civil Procedure and DEA's internal regulations at 0674 et seq, before a court or hearing examiner may grant a judgment or provisional remedies there must be a complaint and service of process on the Appellant. It has been previously ruled in this circuit "absent the filing of complaint, the court lacked jurisdiction to entertain a petition by the taxpayer". See P. K. Family Restaurant v. IRS, 535 F. Supp. 1223, another ruling applicable in this appeal is "a judgment rendered without jurisdiction over the person violates due process. Mc Donald v. Mabee (1971) 243 U.S. 90, 30 S. Ct. 343, 61 L.Ed. 608. This court is allowing the Appellant to be treated differently under the law than other citizens.

2. The court's ORDER further states "an appeal from the denial of a Rule 60(b) motion does not bring up for review the underlying judgment" and cites Amernational Indus., Inc. v. Action-Tungsram, Inc., in support. It is respectfully suggested Guzman filed a Rule 60(b)(4) motion which narrowly limits this courts review and does not allow review of the merits of the underlying judgment as do other types of Rule 60(b) motions. Therefore, the courts citation, supra, is not applicable to the circumstances in Guzman's appeal and it is further suggested because the judgment against Guzman is VOID there are no legal requirements for Guzman or DEA to relitigate the merits of a void judgment, which when considered with the statute of limits effectively

removes any need for relitigation of the merits as alluded to on page 3 of this courts ORDER when citing Mastini v. American Tel & Tel. Co., and Smith v. Mosier.

Guzman is pursuing a statutory right granted by DEA regulation at 0674 et seq and it has been ruled by the Sixth Circuit "where a statutory right is being pursued, however and the defense raised is that the plaintiff or defendant does not come within the purview of the statute, the judicial acceptance of this defense, however, it is accomplished is the death knell of the litigation and has the same effect as a dismissal on the merits." and in this same case the Sixth Circuit clearly and emphatically states "should facts critical to jurisdiction be in dispute, as often times they are, **the court must make appropriate inquiry**, and **must** satisfy itself on authority to entertain the case." Rogers v Stratton Industries, Inc., 798 F.2d 913 (6th Cir. 1986). The absence of the above mandated inquiry by the district court and this court regarding critically important jurisdictional facts in Guzman's appeal effectively shields Appellee's from carrying the required burden of proving the hearing examiners personal jurisdiction over Guzman. Because, the record is silent on this critical jurisdictional issue, other, than the proof submitted as exhibit 3 in Guzman's brief, the glaring question becomes how did the district court and this court satisfy itself on its authority to entertain the case?

3. This courts ORDER evades the real issue in Guzman's appeal which is "will the court allow a void judgment issued without a complaint, service of process or personal jurisdiction over the Appellant to stand?" The unusual and extreme situation Guzman finds himself in cries out for the principles of law and equity to mandate relief. Therefore, Guzman strongly urges this court reconsider its position and resolve his appeal by issuing an order compelling Appellee's to shoulder their required burden of proof and show the court how their hearing examiner lawfully obtained **personal jurisdiction** over Guzman. It is respectfully suggested, until this court holds itself to the same standards it has mandated on all the other courts in this circuit in Rogers v. Stratton Industries (supra) **the statement in this court's ORDER "Guzman's claim has been fully considered by the district court and the Sixth Circuit" is**

simply not true. This courts ORDER in its present form denies Guzman substantial justice, allows a void judgment to stand and supports a violation of DEA's regulations and law by the Appellee's.

Respectfully submitted by,

___"s/_____"_____

Francisco H. Guzman
Appellant - pro se
904 Tinnell Lane
Mt. Juliet, Tennessee 37122
(615)-444-7495

CERTIFICATE OF SERVICE

I certify that a copy of this motion for reconsideration was sent to opposing counsel via first class U.S. Mail on this the 18th day of August 1997.

___"s/_____"_____
Francisco H. Guzman

Appendix G:

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANCISCO H. GUZMAN, Plaintiff - Appellant	)	
v.	)	Docket No: 96-6302
KENNETH A. MILEY, Deputy Regional Director, Drug Enforcement Administration, Defendants - Appellees	)	

Appellant's Response to Appellee's Letter

Instead of filing the proof brief due December 2, 1996, appellee filed an untimely letter dated December 5, 1996, giving the court notice the United States would not file a brief in this case. The appellee's letter goes substantially beyond the requirements to file his notice with the court by improperly stating reasons which belong in a motion to dismiss and/or his brief thereby denying appellant the opportunity for a response to his argument.

The statements in appellee's letter are patently false because the personal jurisdiction issue in the appellant's brief has never been addressed by any court and identifies a **clear error** beginning at page 13 of the district court's 1979 ruling (R.13). The district court ruling addresses the DEA complaint and service of process by stating "Shortly after the letter was issued, however, but prior to the Department of Justice hearing, the regulation was changed to provide for a hearing before a hearing examiner instead of an administrative law judge (AR-I, at 263)." The district court makes a **clear error** by failing to determine if the appellant was lawfully brought under the hearing examiners **new** grant of jurisdiction. The initial inquiry by the district court should have been whether the hearing examiner **properly** asserted jurisdiction over Guzman before addressing the merits of the case. Willis v. Sullivan, 931 F.2d 390 (6th Cir. 1991). emphasis added. It is respectfully suggested the April 29, 1975, change to the 1/15/74 edition of the DEA Administrative manual referred to by the district court substantially **limited** the hearing examiners grant of jurisdiction to the review of **new** or prospective cases and specifically did not grant hearing examiners the jurisdiction to review **pending** cases. (Appellant's Brief, attachment #1). The district court ruling failed to address these substantial jurisdictional facts which require the dismissal of the DEA's case and the issuance of a new complaint and new process for a hearing examiner to lawfully exercise personal jurisdiction over Guzman.

Conclusion

It is respectfully suggested if the court orders a response by the appellee they be ordered to specifically answer all the jurisdictional issues presented in the

appellant's brief. Until these issues are resolved, the appellant is being denied due process and justice. In the alternative, the appellee's letter declining to file a brief suggests they are unable to find proof in the record showing Guzman was lawfully brought under the personal jurisdiction of a hearing examiner. It is respectfully suggested the court set aside as void the hearing examiner's decision and rule the district court abused its discretion as a judgment rendered without jurisdiction over the person violates due process.

Respectfully submitted,

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Francisco H. Guzman
Appellant - Pro Se